

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2107 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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DILIPKUMAR R PARIKH

Versus

KADI MUNICIPALITY  
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Appearance:

MR AD MITHANI for Petitioner  
None present for Respondents  
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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 14/03/2000

ORAL JUDGEMENT

#. Heard the learned counsel for the petitioner.

#. Following prayers have been made in the special  
civil application:

- (A) to issue an appropriate writ, direction, or order directing the respondent No.1 - Municipality to promote the petitioner on the post of Despatch Clerk
- (B) to issue an appropriate writ order or direction quashing and setting aside the decision of the Executive Committee giving promotion to the respondent No.2 herein on the post of Despatch Clerk vide Annexure "E"
- (C) to declare that the Executive Committee has no right, power or authority to pass the resolution giving promotion to respondent No.2 herein
- (D) to restrain the respondents, their servants and agents from giving promotion to the respondent No.2 on the post of Despatch Clerk, till and pending the hearing and final disposal of this petition
- (E) to stay the implementation, operation and execution of the impugned resolution Annexure "E" till and pending the hearing and final disposal of this petition

#. It is the case of petitioner that the post of Despatch Clerk is promotional post from the post of Octroi Clerk. He claims himself to be senior to respondent No.2 but on the record of this special civil application, seniority list has not been produced nor the relevant rules which provide for giving of such promotion. However, the respondents No.1 and 2 have not cared to file reply to the special civil application and in these facts the averments made by petitioner in the special civil application are to be accepted to be admitted but I do not consider it to be appropriate to adopt this course in this special civil application. The claim of the petitioner for promotion is based on seniority and first seniority has to be ascertained, determined and fixed by respondent No.1, which has not been done.

#. This special civil application stands disposed of in the terms that the respondent No.1 is directed to first fix the seniority of petitioner and respondent No.2 in the cadre concerned and thereafter if the petitioner is senior to respondent No.2, his case may be considered for promotion to the post of Despatch Clerk with reference to the date from which the respondent No.2 has been given promotion. If the petitioner is found suitable for

promotion, he shall be entitled for all the consequential benefits. If he is not found entitled for promotion, the matter shall be taken to be filed. Rule is made absolute accordingly with no order as to costs.

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(sunil)